

## Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 NEAE-00 CIAE-00 DODE-00 NSAE-00 NSCE-00

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 9482

INFO AMEMBASSY COLOMBO

AMEMBASSY DACCA

AMEMBASSYSKSLAMABAD

AMEMBASSY KABUL

AMEMBASSY KATHMANDU

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

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E.O. 11652: N/A

TAGS: PINS, PINT, IN

SUBJECT: SCOPE OF EMERGENCY MEASURES IN INDIA

REF: NEW DELHI 8417

SUMMARY: PRESIDENT AHMED'S JUNE 26 PROCLAMATION MARKS THE FIRST TIME IN POST-INDEPENDENCE INDIA THAT AN EMERGENCY HAS BEEN PROCLAIMED AS A RESULT OF "INTERNAL DISTURBANCE." THE DEFENSE OF INDIA RULES (DIR) SANCTIONED BY PARLIAMENT SHORTLY AFTER THE DECEMBER 1971 "EXTERNAL" EMERGENCY ARE STILL IN FORCE, AND WILL PROBABLY BE USED BY THE GOI TO EXERCISE ITS EXTRAORDINARY POWERS DURING THE NEW EMERGENCY. THE NEW EMERGENCY MUST BE APPROVED BY  
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PARLIAMENT WITHIN TWO MONTHS, THOUGH BY DISSOLVING PARLIAMENT,

THIS PERIOD CAN BE EXTENDED TO SEVEN MONTHS. ASIDE FROM SUSPENDING FUNDAMENTAL RIGHTS, THE CONSTITUTION PRECLUDES THE GOI FROM FURTHER RESTRICTING THE JURISDICTION OF THE COURTS.

1. THE PROCLAMATION: PRESIDENT AHMED'S JUNE 26 ANNOUNCEMENT MARKS THE FIRST TIME IN POST-INDEPENDENCE INDIA THAT AN EMERGENCY HAS BEEN PROCLAIMED UNDER THE "INTERNAL DISTURBANCE" RATIONALE OF THE CONSTITUTION'S EMERGENCY PROVISION, ARTICLE 352(1). THE 1962 AND 1971 EMERGENCIES WERE INVOKED UNDER THE "WAR OR EXTERNAL AGGRESSION" RATIONALE OF THE SAME PROVISION.

2. IMPLEMENTARY DEFENSE OF INDIA RULES (DIR) WERE CREATED UNDER AUTHORITY OF A SPECIFIC ACT OF PARLIAMENT IN BOTH PREVIOUS EMERGENCIES. THE 1971 EMERGENCY AND ITS ATTENDANT DIR ARE IN FORCE. THE GOI CAN AND WILL PROBABLY USE THE DIR PASSED IN 1971 AS THE BASIS FOR ITS EXERCISE OF EXTRAORDINARY POWERS DURING THE NEW "INTERNAL" EMERGENCY.

3. A PROCLAMATION OF EMERGENCY GIVES THE GOI ALMOST UNLIMITED POWERS OF LEGISLATION. THE 1971 DIR CONFERS WIDESPREAD EXECUTIVE POWERS ON THE GOI THROUGH THE PRESIDENT TO CENSOR THE PRESS, TO SUSPEND FUNDAMENTAL RIGHTS, TO CONDUCT MILITARY OPERATIONS, CIVIL DEFENSE, TO MAINTAIN PUBLIC ORDER (THE 1971 DIR STRENGTHENS THE MAINTENANCE OF INTERNAL SECURITY ACT OR MISA--THE GOI'S PREVENTIVE DETENTION ACT), AND TO ENSURE THE MOVEMENT OF ESSENTIAL SUPPLIES AND SERVICES. THE PRESIDENT CAN ALSO SUPPLEMENT THESE ALREADY EXTENSIVE EXECUTIVE POWERS THROUGH FURTHER ORDINANCES, INCLUDING DIRECTIVES THAT WOULD QUALIFY OR ELIMINATE THE AUTHORITY OF STATE GOVERNMENTS. SUCH SUPPLEMENTARY ORDINANCES, HOWEVER, MUST BE APPROVED BY PARLIAMENT WITHIN SIX MONTHS.

4. EMERGENCY TIMEFRAME: THE EXTANT 1971 "EXTERNAL" EMERGENCY

AND ATTENDANT DIR WILL CONTINUE UNTIL THE GOI THROUGH THE PRESIDENT UNILATERALLY TERMINATES IT. THE JUNE 26 EMERGENCY MUST (ACCORDING TO ARTICLE 352 OF THE CONSTITUTION) BE APPROVED BY A RESOLUTION OF BOTH HOUSES OF PARLIAMENT WITHIN TWO MONTHS OF ITS PROCLAMATION. IN THE EVENT THE PRESIDENT DISSOLVES THE LOK SABHA, THIS PERIOD CAN BE EXTENDED TO SEVEN MONTHS, BUT NOT BEYOND, FOR ELECTION OF A NEW PARLIAMENT MUST TAKE PLACE WITHIN SIX LIMITED OFFICIAL USE

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MONTHS. IF BOTH HOUSES PASS THE NEW RESOLUTION, IT TOO WILL CONTINUE IN FORCE UNTIL UNILATERALLY REVOKED BY THE PRESIDENT.

5. THE EMERGENCY AND THE JUDICIARY: THE CONSTITUTION ALLOWS THE PRESIDENT TO SUSPEND ALL COURT PROCEEDINGS FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS DURING A NATIONAL EMERGENCY. RESTRICTIONS ON THE COURTS DURING A NATIONAL EMERGENCY END HERE. UNDER THE CONSTITUTION, THE EXECUTIVE AND PARLIAMENT CANNOT FURTHER LIMIT

THE COURT'S JURISDICTION, THOUGH PARLIAMENT CAN EXPAND IT  
(ARTICLES 137-140). THE INVOCATION OF THE EMERGENCY IN ITSELF DOES  
NOT THEREFORE BLOCK THE SUPREME COURT FROM PROCEEDING AS  
SCHEDULED WITH MRS. GANDHI'S APPEAL IN MID-JULY.  
SCHNEIDER

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